

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ILLINOIS TOOL WORKS INC.,

Plaintiff,

v.

TERMAX COMPANY,

Defendants.

Civil Action No. 1:20-cv-05416
Honorable Virginia M. Kendall

JURY TRIAL DEMANDED

**PLAINTIFF ITW’S RULE 12(b)(6) RENEWED MOTION TO DISMISS DIRECTED TO
DEFENDANT TERMAX COMPANY’S SECOND AMENDED COUNTERCLAIM FOR
ALLEGED UNENFORCEABILITY OF U.S. PATENT NO. D897,826**

Plaintiff Illinois Tool Works Inc. (“ITW” or “Plaintiff”), by and through its attorneys, moves to dismiss Defendant Termax Company’s second amended counterclaim for unenforceability of U.S. Design Patent No. D897,826 (“the ‘D826 patent’”) (Count VI), including all related affirmative defenses (collectively “Second Amended Counterclaim”) with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). As set forth in the accompanying memorandum, Termax’s Second Amended Counterclaim fails to sufficiently plead facts pursuant to Rule 9(b), and/or fails to plead plausible facts, to support a cause of action for unenforceability of the ‘D826 patent due to alleged inequitable conduct before the Patent Office.

Pursuant to the United States District Court for the Northern District of Illinois Fifth Amended General Order 21-0027 (which provides that Local Rule 5.3(b) is suspended and that motions should not be noticed for presentment), ITW respectfully asks that the Court either enter a briefing schedule on ITW’s motion or set it for hearing at the Court’s earliest convenience.

Dated: December 30, 2022

/s/ Eligio C. Pimentel

Eligio C. Pimentel

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2022 I electronically filed the foregoing PLAINTIFF ITW'S RULE 12(b)(6) MOTION TO DISMISS DIRECTED TO DEFENDANT TERMAX COMPANY'S SECOND AMENDED COUNTERCLAIM FOR ALLEGED UNENFORCEABILITY OF U.S. PATENT NO. D897,826 with the Clerk of Court using the CM/ECF system, with a courtesy copy sent via electronic mail, as follows:

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/s/ Eligio C. Pimentel

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